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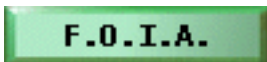
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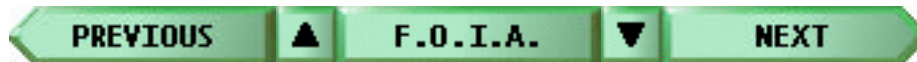


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Note: Any typos found in this document are transposition errors due to retyping and not necessarily an error in the original document.



Freedom of Information Kit

The following files are for individuals or organizations who wish to make an FOIA application to a federal agency. Please read the file <Instructions> before making your application. There are 5 files; FOIA Instructions, FOIA Application; FOIA Fee Waiver; FOIA Appeal; selected Federal FOIA Addresses; and FBI Offices nationwide.

This kit is also available in printed form. If you wish to obtain the printed version, please send a check or money order made payable to FOIA,Inc. for \$3.00 to:

FOIA,Inc.

P.O. Box 02 2397

Brooklyn, NY 11202-0050.

FOIA FILES KIT



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1. FOIA INSTRUCTIONS

USING THE FREEDOM OF INFORMATION ACT

The Freedom of Information Act entitles you to request any record maintained by a federal Executive branch agency. The agency must release the requested material unless it falls into one of nine exempt categories, such as “national security,” “privacy,” “confidential source” and the like, in which case the agency may but is not compelled to refuse to disclose the records. This kit contains all the materials needed to make FOIA requests for records on an individual, an organization or on a particular subject matter or event.

1988 EDITION

Fund for Open Information and Accountability, Inc. P.O. BOX 02
2397, Brooklyn, NY 11202-0050 (212) 477-3188

INSTRUCTIONS HOW TO MAKE A COMPLETE REQUEST

Step 1: Select and make copies of the sample letter. Fill in the blanks in the body of the letter. Read the directions printed to the right margin of the letter in conjunction with the following instructions:

For individual files: Insert the person's full name in the first blank space and any variations in spelling, nicknames, stage names, marriage names, titles and the like in the second space. Unlike other requests, the signatures of an individual requesting her/his own file must be notarized.

For organizational files: In the first blank space insert the full and formal name of the organization whose files you are requesting. In the second blank space insert any other names, acronyms or shortened forms by which the organization is or has ever been known or referred to by itself or others. If some of the organization's work is conducted by sub-groups such as clubs, committees, special programs or through coalitions known by other names, these should be listed. There is no need to notarize signature for organizational requests.

For subject matter or event files: In the first blank space state the formal title of the subject matter or event including relevant dates and locations. In the second blank

space provide the names of individuals or group sponsors or participants and/or any other information that would assist the agency in locating the material you are requesting.

Step 2: The completed sample letter may be removed, photocopied and mailed as is or retyped on your own stationary. Be sure to keep a copy of each letter.

Step 3: Addressing the letters: Consult list of agency addresses on page 7 and 8 of this kit. FBI: A complete request requires a minimum of two letters. Send one letter to FBI Headquarters and separate letters to each FBI field office nearest the location of the individual, the organization or the subject matter/event. Consider the location of residences, schools, work, and other activities. INS: Send a request letter to each district office nearest the location of the individual, the organization or the subject matter/event. Address each letter to the FOIA/PA office of the appropriate agency. Be sure to mark clearly on the envelope: Attention FOIA Request.



FEES

In 1987 a new fee structure went into effect. Each agency has new fee regulations for search and review time and for duplication of released documents. Commercial requesters must pay for search and review time and for duplication costs. News Media representatives and Educational and Scientific Institutions whose purpose is scholarly or scientific research pay for duplication only. Public Interest groups who can qualify as press, educational, or scientific institutions will be charged duplication costs only. All other non-commercial requesters are entitled to up to 100 pages of free copying and up to 2 hours of free search time. Requesters will have to pay fees for work that extends beyond those limits unless they qualify for a fee waiver or reduction (see below). No fee may be charged if the cost of collection exceeds the fee. Advanced payment may not be demanded unless a requester has previously failed to pay on time or the fee exceeds \$250.

FEE WAIVER

You will notice that the sample letter includes a request for a fee waiver with instructions for the agency to refer to an attached sheet. Fees for all non-commercial requesters, beyond the 2 hours/100 page/automatic waiver described above, may be waived or reduced if the disclosure of the information is: in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. You should always request a waiver or fees if you believe the information you are seeking will benefit the public. Read the fee waiver worksheet for non-commercial users included in this kit on page 5 for help in composing a request for a fee waiver. If your request for a waiver is denied, you should appeal that denial, citing the ways in which your request meets the standards set in the attached fact sheet.



HOW TO MAKE SURE YOU GET EVERYTHING YOU ARE ENTITLED TO. . . AND WHAT TO DO IF YOU DON'T

After each agency has searched and processed your request, you will receive a letter that announces the outcome, encloses the released documents, if any, and explains where to direct an appeal if any material has been withheld. There are four possible outcomes:

1. Request granted in full: This occurs very infrequently. If the response indicates that the agency has released all records pertinent to your request, with no exclusions or withholdings, you will receive the requested documents with an agency cover letter, or if bulky, the documents may be mailed under separate cover.

Next step: Check documents for completeness (see instructions below) and make an administrative appeal if you find a discrepancy between your own analysis and that of the agency (see instructions below).

2. Request granted in part and denied in part: This response indicates that the agency is releasing some material but has withheld some documents entirely or excized some passages from the documents released. The released documents may be enclosed or, if bulky, mailed under separate cover.

Next step: Check documents for completeness (see instructions below) and make an administrative appeal of denials or incompleteness (see instructions below).

3. Request denied in full: This response and the denied part response indicate that the agency is asserting that material in its files pertaining to your request falls under one of the nine FOIA exemptions. These are categories of information that the agency may, at its discretion, refuse to release.

Next step: Make an administrative appeal (see instructions below). Since FOIA exemptions are not mandatory, even a complete denial of your request can and should be appealed.

4. No records: This response will state that a search of the agency's files indicates that it has no records corresponding to those you requested. Next step: Check your original request to be sure you have not overlooked anything. If you receive documents from other agencies, review them for indications that there is material in the files of the agency claiming it has none. For example, look for correspondence, or references to correspondence, to or from that agency. If you determine that there are reasonable grounds, file an administrative appeal (see instructions below).



HOW TO CHECK DOCUMENTS FOR COMPLETENESS

- Step 1:** Before reading the documents, turn them over and number the back of each page sequentially. The packet may contain documents from the agency's headquarters as well as several field office files. Separate the documents into their respective office packets. Each of these offices will have assigned the investigation a separate file number. Try to find the numbering system. Usually the lower righthand corner of the first page carries a hand-written file and document number. For instance, an FBI document might be marked "100-7142-22." This would indicate that it is the 22nd document in the 7142nd file in the 100 classification. As you inspect the documents, make a list of these file numbers and which office they represent. In this way you will be able to determine which office created and which office received the document you have in your hand. Often there is a block stamp affixed with the name of the office from whose files this copy was retrieved. The "To/From" heading on a document may also give you corresponding file numbers and will help you puzzle out the origin of the document. When you have finally identified each document's file and serial number and separated the documents into their proper office batches, make a list of all the serial numbers in each batch to see if there are any missing numbers. If there are missing serial numbers and some documents have been withheld, try to determine if the missing numbers might reasonably correspond to the withheld documents. If they don't, the release may be incomplete and an administrative appeal should be made.
- Step 2:** Read all the documents released to you. Keep a list of all documents referred to in the text, including letters, memos, teletypes, reports, etc. Each of these "referred to" documents should turn up in the packet released to you. If any are not in the packet, it is possible that they are among the documents withheld and a direct inquiry should be made. In an administrative appeal, ask that each of these "referred to" documents be produced or that the agency state plainly that they are among those withheld. List each "referred to" document separately. The totals of unproduced vs. withheld must be within reason; that is, if the total number of unproduced documents you find referred to in the text of the documents produced exceeds the total number of documents withheld, the agency cannot claim that all the "referred to" documents are accounted for by the withheld category. You will soon get the hang of making logical conclusions from discrepancies in totals and missing document numbers.

Another thing to look for when reading the released documents is the names of persons or agencies to whom the document has been disseminated. The lower left-hand corner is a common location for the typed list of agencies or offices to whom the document has been directed. In addition, there may be additional distribution recorded by hand, there or elsewhere, on the cover page. There are published glossaries for some agencies that will help in deciphering these notations when they are not clear. Contact FOIA, Inc. if you need assistance in deciphering the text. Finally, any other file numbers that appear on the document should be noted, particularly if the subject of the file is of interest and is one you have not requested. You may want to make an additional request for some of these files.

HOW TO MAKE AN ADMINISTRATIVE APPEAL

Under the FOIA, a dissatisfied requester has the right of administrative appeal. The name and address of the proper appeal office will be given to you by each agency in its final response letter. This kit contains a sample appeal letter with suggestions for adapting it to various circumstances. However, you need not make such an elaborate appeal; in fact, you need not offer any reasons at all but rather simply write a letter to the appeals unit stating that "This letter constitutes an appeal of the agency's decision." Of course, if you have identified some real discrepancies, you should set them forth fully (for example see Step 2 under "How to Check Documents for Completeness"), but even if you have not found any, you may simply ask that the release be reviewed. If you are still dissatisfied after the administrative appeal process, the FOIA gives you the right to bring a lawsuit in federal district court.

MONITORING THE PROGRESS OF YOUR REQUEST

You should receive a letter from each agency within 10 days stating that your request has been received and is being processed. You may be asked to be patient since requests are being handled on a first come first served basis. The best strategy is to be "reasonably" patient, but there is no reason to sit complacently and wait for an interminable period of time. A good strategy is to telephone the FOIA office in each agency after about a month if you have received nothing of substance. Ask for a progress report. Note the name of the person you speak to and what they say. Continue to call every 4 to 6 weeks.

Good record keeping helps avoid time-consuming and frustrating confusion. A looseleaf notebook with a section devoted to each request simplifies this task. At the beginning of the request process, sometimes it is difficult to foresee what course of action you will want to take in the future. Keep copies of all correspondence to and from each agency. They can be inserted between the notes on phone calls so that all relevant material will be at hand for future use, including phone consultations, correspondence, newspaper articles, preparation for media appearances, congressional testimony or litigation.



2. FOIA APPLICATION (ALL AGENCIES)

[NOTE: All the text in braces [] is for your information. Do NOT include in request]

[NOTE: Start by photocopying several copies of this letter or retype if you prefer]

SAMPLE REQUEST LETTER FOR ALL AGENCIES

Date: O FBI Headquarters

To: FOIA/ PA Unit

O FBI Field Office:

O Other Agency:

[Check box for appropriate agency]

This is a noncommercial request under the Freedom of Information and Privacy Acts. I have attached a sheet setting out my application for a fee waiver of any fees in excess of those which are provided free because of my category.

My category for fee and fee waiver purposes is (check one):

- request for personal file; no search fee and 100 free pages.
- journalist, academic or scientist; no search fee and 100 free pages.
- other non-commercial requester (group or person); 2 hours free search and 100 free pages.

I request a complete and thorough search of all filing systems and locations for all records maintained by your agency pertaining to and/or captioned:

including, without limitation, files and documents captioned,
or whose captions include

[describe records desired and/or insert full and formal name]

This request specifically includes where appropriate "main" files and "see references," including but not limited to numbered and lettered sub files and control files. I also request a search of the Electronic Surveillance (ELSUR) Index, or any similar technique for locating records of electronic surveillance and the COINTELPRO Index. I request that all records be produced with the administrative pages. I wish to be sent copies of "see reference" cards, abstracts, search slips, including search slips used to process this request, file covers, multiple copies of the same documents if they appear in a file, tapes of any electronic surveillance, photographs, and logs of physical surveillance (FISUR). Please place missing documents on "special locate."

I wish to make it clear that I want all records in your office "identifiable with my request," even though reports on those records have been sent to Headquarters and even though there may be duplication between the two sets of files. I do not want just

“interim” documents. I want all documents as they appear in the “main” files and “see references” of all units of your agency.

If documents are denied in whole or in part, please specify which exemption(s) is(are) claimed for each passage or whole document denied. Give the number of pages in each document and the total number of pages pertaining to this request and the dates of documents withheld. I request that excised material be “blacked out” rather than “whited out” or cut out and that the remaining non-exempt portions of documents be released as provided under the Freedom of Information Act. Please send a memo (with a copy or copies to me) to the appropriate unit(s) in your office to assure that no records related to this request are destroyed. Please advise of any destruction of records and include the date of and authority for such destruction. As I expect to appeal any denials, please specify the office and address to which an appeal should be directed.

I can be reached at the phone listed below. Please call rather than write if there are any questions or if you need additional information from me. I expect a response to this request within ten (10) working days, as provided for in the Freedom of Information Act.

Sincerely,

(Signed)_____

Name (print or type):_____

Address:_____

Telephone:_____ Social Security number (optional): _____ (for personal files)
(for organization files)

Date of Birth:_____ Date of founding: _____

Place of birth:_____ Place of founding: _____

Address of organization:_____

[MARK CLEARLY ON ENVELOPE: FOI/PA REQUEST]



3. FOIA FEE WAIVER

Fee Waiver Worksheet for Non-Commercial Requesters

All non-commercial requesters are entitled to apply for a fee waiver for charges in excess of those which are provided free because of requester's category. Following amendments to the FOIA in October 1986, the Justice Department issued a memo outlining six criteria to be used by agencies in determining whether or not to grant fee waivers. Many Congresspeople dispute the memo's legality, pointing out its invitation to subjective judgments, and its proclivity to intimidate requesters. Nevertheless, until the six criteria are eliminated, either by Congress or court decisions, requesters will have to address them in order to qualify for a fee waiver. To apply for a fee waiver, attach a separate sheet of paper to your request letter explaining in narrative form how your request satisfies each of the following six criteria. (All highlighted phrases in the following text are taken directly from the Justice Department memo):

- (1) Explain how the records you are requesting are likely to shed light on the operations or activities of the government. (2) Describe how the records you are requesting will contribute to the understanding of government operations or activities. If the information being requested is not already in the public domain bring this fact to the agency's attention. (3)a. Explain to the agency how the public will ultimately benefit from the information you are requesting. Legislative history and recent case law indicate that the "public" is not limited to U.S. public nor must it be the "public at-large." For example, Representatives English and Kindness jointly stated during recent Congressional debate, "Public understanding is enhanced when information is disclosed to the subset of the public most interested, concerned or affected by a particular action or matter."

Furthermore, District Court Judge Harold Greene in a 1987 opinion involving a request by a Canadian newspaper said, "There is no requirement in the [FOIA] statute that news media seeking fee waivers [must] serve the American public exclusively, or even tangentially ... an FBI official does not have the authority to amend the law of the United States by restricting it beyond its plain terms."* In other words, the public you seek to educate does not have to reside in the United States, nor is the size of that public relevant to your entitlement to a fee waiver.

- (3)b. Explain to the agency your qualifications (educational, work experience, etc.) for understanding the requested information and outline your ability and intention to disseminate the information once it has been obtained. You might want to cite any of the following activities in order to demonstrate your ability and intention to disseminate information to the public: writing newspaper or scholarly articles, writing books, granting interviews, public speaking engagements, preparing Congressional testimony, producing pamphlets, videos, film, radio programs, etc.
- (4) The Justice Department memo stipulates that the contribution to public understanding must be "significant." What constitutes a "significant" contribution is clearly susceptible to subjective interpretation. However, we suggest that you make reference to current news stories, efforts to correct the historical record or expose government or corporate fraud or threats to public health and safety. Broadly speaking, any information that would enable the public to hold the government accountable for any of its

operations or activities can be persuasively argued to be a “significant” contribution to public understanding.

- (5) and (6) Explain to the agency (if it is the case) that any commercial interest that will be furthered by the requested records is not the primary interest when compared to the public interest that will be served. For example, if the information is requested pursuant to the publication of a book, you should explain (if it is the case) that this book is not destined to become a bestseller because of topic, publisher, or anticipated audience, etc.

News media representatives, scholars or scientists, should make requests for documents and fee waivers on the appropriate institutional letterhead. Similarly, requests for organizational files should be made on the appropriate letterhead. You have a right to file an administrative appeal if you receive an adverse decision regarding either your fee category or fee waiver request. The letter containing the adverse decision will tell you to whom you should direct the appeal. * Joint statement by Reps. English and Kindness, Congressional Record, H- 9464, October 8, 1986; Judge Greene’s opinion in Southam News v. INS.

(Civ. No. 85-2721, D.D.C., November 9, 1987). <4> FOIA Appeal



4. FOIA FEE APPEAL

SAMPLE ADMINISTRATIVE APPEAL LETTER

Date: To: FOIA/PA Appeals Office RE: Request number
[Add this if

the agency has given your request a number] This is an appeal pursuant to subsection (a)(6) of the Freedom of Information Act as amended (5 U.S.C. 552). On [date] I received a letter from [name of official] of your agency denying my request for [describe briefly the information your are after]. This reply indicated that an appeal letter could be sent to you. I am enclosing a copy of my exchange of correspondence with your agency so that you can see exactly what files I have requested and the insubstantial grounds on which my request has been denied.

[Insert following paragraph if the agency has withheld all or nearly all the material which has been requested]

You will note that your agency has withheld the entire (or nearly entire) document that I requested. Since the FOIA provides that "any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt," I believe that your agency has not complied with the FOIA. I believe that there must be (additional) segregable portions which do not fall within the FOIA exemptions and which must be released.

[Insert following paragraph if the agency has used the (b)(1) exemption for national security purposes to withhold information]

Your agency has used the (b)(1) exemption to withhold information. [I question whether files relating to events that took place over twenty years ago could realistically harm the national security.] [Because I am familiar with my own activities during the period in question, and know that none of these activities in any way posed a significant threat to the national security, I question the designation of my files or portions of my file as classified and exempt from disclosure because of national security considerations.]

[Sample optional arguments to be used if the exemption which is claimed does not seem to make sense; you should cite as many specific instances as you care to of items withheld from the documents that you have received. We provide two examples which you might want to adapt to your own case.]

"On the memo dated_____the second paragraph withheld under the (b)(1) exemption appears to be describing a conversation at an open meeting. If this is the case, it is impossible that the substance of this conversation could be properly classified." Or, "The memo dated_____ refers to a meeting which I attended, but a substantial portion is deleted because of the (b)(6) and (b)(7)© exemptions for unwarranted invasions of personal privacy. Since I already know who attended this meeting, no privacy interest is served by the withholding."

I trust that upon examination of my request, you will conclude that the records I have requested are not properly covered by exemption(s)_____ [insert the exemption(s) which the agency's denial letter claimed applied to your request] of the amended FOIA, and that you will overrule the decision to withhold the information.

[Insert following paragraph if an itemized inventory was not supplied by the agency]

If you choose to continue to withhold some or all of the material which was denied in my initial request to your agency, I ask that you give me an index of such material, together with the justification for the denial of each item which is still withheld. As provided in the Freedom of Information Act, I will expect to receive a reply to this administrative appeal letter within twenty (20) working days. If you deny this appeal and do not adequately explain why the material withheld is properly exempt, I intend to initiate a lawsuit to compel its disclosure.

[You can say that you intend to sue if that is your present inclination even though you may ultimately decide not to file suit.]

Sincerely,

name:

address:

signature:

**[MARK CLEARLY ON ENVELOPE: ATTENTION: FREEDOM OF
INFORMATION]**



5. FOIA ADDRESSES OF SELECTED FEDERAL AGENCIES

FUND FOR OPEN INFORMATION AND ACCOUNTABILITY, INC. P.O. BOX 02

2397, BROOKLYN, NY 11202-0050

FOIA/PA ADDRESSES FOR SELECTED FEDERAL AGENCIES

Administrative Office of the U.S. Courts Washington, D.C. 20544

(202) 633-6117

Bureau of Prisons 320 1st St., NW Washington, D.C. 20534

(202) 724-3198

Central Intelligence Agency Information and Privacy Coordinator

Washington, D.C. 20505

Civil Service Commission Appropriate Bureau (Bureau of Personnel Investigation, Bureau of Personnel Information Systems, etc.)

Civil Service Commission 1900 E Street, N.W. Washington, D.C.

20415 (202) 632-4431

Commission on Civil Rights General Counsel, U.S. Commission on Civil Rights 1121 Vermont Ave., N.W., Rm. 600 Washington, D.C.

20405 (202) 376-8177

Consumer Product Safety Commission 1111 18th St., N.W.

Washington, D.C. 20207 (301) 492-6580

Defense Intelligence Agency The Pentagon Washington, D.C.

20301-6111 (202) 697-8844

Department of Defense/Department of the Air Force Freedom of Information Manager Headquarters, USAF/DADF Washington, D.C.

20330-5025 (202) 545-6700

Department of Defense/Department of the Army General Counsel Secretary of the Army The Pentagon, Rm. 2E727 Washington, D.C.

20310 (202) 545-6700

Department of Defense/ Marine Corps Commandant of the Marine Corps
Department of the Navy Headquarters, Marine Corps

Washington, D.C. 20380-0001 (202) 694-2500

Department of Defense/ Dept. of the Navy Chief of Naval Operations OP 09
B30 Pentagon, Rm. 5E521 Washington, D.C.

20350-2000 (202) 545-6700

Department of Energy 1000 Independence Ave., S.W. Washington,
D.C. 20585 (202) 252-5000

Department of Justice/ General Administration (includes Civil Rights Division,
Antitrust Division, Drug Enforcement Admin., Immigration and Naturalization
Service) FOIA/ Privacy Act Unit (of the appropriate division)

Department of Justice Constitution Ave. & 10th St., N.W.
Washington, D.C. 20530 (202) 633-2000

Department of Labor 200 Constitution Ave., N.W. Washington, D.C.
20210 (202) 523-8165

Department of State Director, Freedom of Information Bureau for
Public Administration Department of State, Rm 239 2201 C St.,
N.W. Washington, D.C. 20520 (202) 647-3411

Department of the Treasury Internal Revenue Service 1111 Constitution Ave., N.W.
Washington, D.C. 20224 (202) 566-5000 (Consult phone book for regional offices)

Environmental Protection Agency Freedom of Information Office
A101 Room 1132 West Tower 401 M St., S.W. Washington, D.C. 20460
(202) 382-4048

Equal Employment Opportunities Comm. Office of Legal Services
2401 E St., N.W., Rm. 214 Washington, D.C. 20507 Attn. Richard
Roscio, Assc. Legal Counsel (202) 634-6922

Federal Communications Commission 1919 M St., N.W. Washington,
D.C. 20554 (202) 254-7674

Food and Drug Administration 5600 Fishers Lane Rockville, MD
20857 (301) 443-1544

Health and Human Services 200 Independence Ave., S.W.
Washington, D.C. 20201 Housing and Urban Development 451 Seventh
St., S.W. Washington, D.C. 20410 (202) 755-6420

National Aeronautics & Space Administration 400 Maryland Ave,
S.W. Washington, D.C. 20546 (202) 453-1000

National Archives and Records Service Pennsylvania Ave. at 8th
St., N.W. Washington, D.C. 20408 (202) 523-3130

National Labor Relations Board 1717 Pennsylvania Ave., N.W.
Washington, D.C. 20570 (202) 632-4950

National Security Agency Ft. George G. Meade, MD 20755-6000 (301)
688-6311

National Security Council Old Executive Bldg. 17th &
Pennsylvania Ave., N.W. Washington, D.C. 20506 Attn. Brenda
Reger (202) 395-3103

Nuclear Regulatory Commission Director, Office of Administration
Washington, D.C. 20555 (202) 492-7715

Secret Service U.S. Secret Service 1800 G St., N.W. Washington,
D.C. 20223 Attn. FOIA/ Privacy Office (202) 634-5798

Securities and Exchange Commission 450 5th St., N.W. Washington,
D.C. 20549 (202) 272-2650

U.S. Customs Service 1301 Constitution Ave., N.W. Washington,
D.C. 20229 (202) 566-8195

U.S. Agency for International Development 320 21st. St., N.W.
Washington, D.C. 20532 (202) 632-1850

U.S. Office of Personnel Management 1900 E St., N.W. Washington,
D.C. 20415 (202) 632-5491

U.S. Postal Service Records Office 475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-5010 (202) 245-5568

Veterans Administration 810 Vermont Ave., N.W. Washington, D.C.
20420 (202) 389-2741



6. FBI ADDRESSES & PHONE NUMBERS NATIONWIDE

2/88

DIVISION	ADDRESS	TELEPHONE
Albany, NY 12207	502 U.S. Post Office and Courthouse	518-465-7551
Albuquerque, NM 87102	301 Grand Ave. NE	505-247-1555
Alexandria, VA 22314	300 N. Lee St	703-683-2680
Anchorage, AK 99513	701 C St	907-276-4441
Atlanta, GA 30302	275 Peachtree St. NE	404-521-3900
Baltimore, MD 21207	7142 Ambassador Rd	301-265-8080
Birmingham, AL 35203	Room 1400, 2121 Bldg	205-252-7705
Boston, MA 02203	John F. Kennedy Federal Office Bldg	617-742-5533
Buffalo, NY 14202	111 W. Huron St	716-856-7800
Butte, MT 59702	U.S. Courthouse and Federal Bldg	406-792-2304
Charlotte, NC 28210	6010 Kenley Lane	704-529-1030
Chicago, IL 60604	219 S. Dearborn St	312-431-1333
Cincinnati, OH 45205	50 Main St	513-421-4310
Cleveland, OH 44199	1240 E. 9 th St	216-522-1400
Columbia, SC 29201	1529 Hampton St	803-254-3011
Dallas, TX 75202	1801 N. Lamar	214-741-1851
Denver, CO 80202	Federal Office Bldg	303-629-7171
Detroit, MI 48226	477 Michigan Ave	313-965-2323
El Paso, TX 79901	202 U.S. Courthouse Bldg	915-533-7451
Honolulu, HI 96850	300 Ala Moana Blvd	808-521-1411
Houston, TX 77002	515 Rusk Ave	713-224-1511
Indianapolis, IN 46204	575 N. Pennsylvania St	317-639-3301
Jackson, MS 39264	100 W. Capitol St	601-948-5000
Jacksonville, FL 32211	7820 Arlington Expressway	904-721-1211
Kansas City, MO 64106	300 U.S. Courthouse Bldg	816-221-6100
Knoxville, TN 37919	1111 Northshore Dr	615-588-8571
Las Vegas, NV 89101	Las Vegas Blvd. S	702-385-1281
Little Rock, AR 72201	215 U.S. Post Office Bldg	501-372-7211
Los Angeles, CA 90024	11000 Wilshire Blvd	213-477-6565
Louisville, KY 40202	600 Federal Pl	502-583-3941
Memphis, TN 38103	67 N. Main St	901-525-7373
Miami, FL 33137	3801 Biscayne Blvd	305-573-3333
Milwaukee, WI 53202	517 E. Wisconsin Ave	414-276-4684
Minneapolis, MN 55401	392 Federal Bldg	612-339-7861
Mobile, AL 36602	113 St. Joseph St	205-438-3674
Newark, NJ 07102	Gateway 1, Market St	201-622-5613
New Haven, CT 06510	150 Court St	203-777-6311
New Orleans, LA 70112	1250 Poydras St., Suite 2200	504-522-4670
New York, NY 10278	26 Federal Plaza	212-553-2700
Norfolk, VA 23510	200 Granby Mall	804-623-3111
Oklahoma City, OK	73118 50 Penn Pl	405-842-7471
Omaha, NE 68102	215 N. 17 th St	402-348-1210
Philadelphia, PA	600 Arch St	215-629-0800
Phoenix, AZ 85012	201 E. Indianola	602-279-5511
Pittsburgh, PA	1000 Liberty Ave	412-471-2000
Portland, OR 97201	1500 SW 1 st Ave	503-224-4181
Quantico, VA 22135	FBI Academy	703-640-6131

Richmond, VA 23220
Sacramento, CA 95825
St. Louis, MO 63103
Salt Lake City, UT
San Antonio, TX 78206
San Diego, CA 92188
San Francisco, CA 94102
San Juan, PE 00918
Savannah, GA 31405
Seattle, WA 98174
Springfield, IL 62702
Tampa, FL 33602
Washington, DC 20401

200 W. Grace St
2800 Cottage Way
1520 Market St
84138 125 S. State St
615 E. Houston
880 Front St
450 Golden Gate Ave
Hato Rey, PR
5401 Paulsen St
915 2nd Ave
535 W. Jefferson St
500 Zack St
1900 Half St. SW

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916-481-9110
314-241-5357
801-355-8584
512-225-6741
619-231-1122
415-552-2155
809-754-6000
912-354-9911
206-622-0460
217-522-9675
813-228-7661
202-324-3000

WASHINGTON UPDATE ON INFORMATION POLICY

By Donna Demac

"Facts are stupid things," blurted out President Reagan not too long ago. He apparently feels the same way about rights, including the right to know. During this last year of Reagan's reign, the executive branch as well as Congress have adopted yet more policies that weaken public access to information. What follows is a summary of recent developments in Washington and a look ahead to those issues that are germane to government accountability and information policy in the coming year.

A trend to keep an eye on is the proposed adoption of increased restrictions covering unclassified information. In some cases, though not all, such proposals explicitly exempt information from disclosure under the Freedom of Information Act. An early example of this was a 1983 amendment to the Atomic Energy Act which allows the Department of Energy to restrict "unclassified controlled nuclear information." This broadly-worded standard encompasses, among other things, information about the health effects on humans from past and present nuclear testing. In the Department of Defense authorization bill for 1987, DOD was given a green light to withhold "sensitive, technical information whether classified or unclassified." Important here is the extraordinary amount of research funded by DOD and the seemingly limitless number of publications that could potentially be restricted. Even before this exemption was passed, there were complaints about DOD's rulings on research that could be shared at scientific conferences, and DOD's classifying research projects midway—projects that started out unclassified.

Other agencies began seeking the same privilege to restrict unclassified information. In 1988 legislation was introduced that would allow the Nuclear Regulatory Commission to withhold "certain sensitive generic safeguards information" which could "negate or compromise site specific security measures." Another bill permitted NASA to withhold from disclosure any technical data that could not be exported without a license under the Export Administration Act of 1979.

This link to export controls broadens considerably the volume of information NASA could restrict if this bill were enacted. Since the late seventies, government concern over the appropriation of scientific and technical information by foreign countries has resulted in the use of export regulations that previously applied to hardware to limit the flow of information. In one well-known instance, the Atomic Energy Act was used in 1979 to prohibit the publication of an article entitled "The H-Bomb: How We Got It, Why We're Telling It," in *The Progressive* magazine, even though all the information contained in that article was readily accessible.

>From the outset, the Reagan administration has aggressively used export regulations to stop what it calls a "massive hemorrhage" of sensitive information to the Soviets. As a result, scientists and researchers are required to submit their writing for prior review by their government sponsors, foreign students have been barred from certain courses in U.S. universities and, in several instances, attendance at scientific conferences has been limited to U.S. citizens.

Yet another expansive rationale for restricting unclassified information has appeared on the scene. This one is aimed at limiting the dissemination of technological and

scientific information on the grounds that unfettered access could harm the “economic competitiveness of the U.S.” The underlying concern is that laboratory research in this country is not being turned to commercial advantage fast enough to compete with foreign firms. The Superconductivity Competitiveness Act, a White House-sponsored bill, incorporated this reasoning and received a considerable amount of attention this year. Although defeated, if it had been passed, this legislation would have exempted from release under the FOIA certain commercially valuable scientific and technical information if it: (1) had been generated in government laboratories; (2) had commercial value; and (3) disclosure could “be reasonably expected to cause harm to the economic competitiveness of the United States.”

At a hearing last spring on the bill, industry witnesses and research scientists opposed the legislation. Robert Park of the American Physical Society said the bill “reeks of chauvinism and ignores the international character of the research.” Others argued that contrary to what the proponents’ stated intentions were—that secrecy would result in the strengthening of the economic competitiveness of the U.S.—it is the open exchange of information that increases the odds of remaining competitive.

Nonetheless, it’s clear that strong competition from abroad is generating greater support in Congress for controlling the international flow of technical information. After the superconductivity bill was defeated, similar language appeared in another piece of legislation that would have allowed national laboratories to withhold technological information from universities and private industry. Known as the National Laboratories Competitiveness Act, this bill too, was defeated. Yet FOIA supporters should remain on the alert for future agency attempts to use a commercial value test as a rationale for exempting material under FOIA.

Indeed, the close nexus between government and industry in the development of superconductors and other advanced technology suggests that we will see the institutionalization of the commercial value test rationale with research contracts as well as administrative regulation. Scientists and industry leaders concerned with excessive secrecy say that support for the development of new superconductors—a technology that has both military and civilian applications—is already dominated by the military. One of the principal recommendations of a report issued in October to the DOD on the national economy was that the Pentagon should take a more active role in heading off “an increasing loss of technological leadership to both our allies and adversaries.”

FOIA supporters face two other important challenges in 1989. First, we must become actively involved in hearings and legislation to correct the way in which executive branch agencies have interpreted the fee waiver provisions adopted in the Freedom of Information Reform Act of 1986. Both the Justice Department and the Office on Management and Budget issued regulations which make it more difficult, and in many cases cost prohibitive, for researchers, freelance journalists and others to obtain fee waivers.

Some members of Congress have voiced their dissatisfaction with these actions. Representative Glenn English, a sponsor of the 1986 Act, has advised agencies which fall under FOIA to ignore OMB’s restrictive definitions of “news media” and “educational institutions,” saying the agency went beyond its limited authority to issue fee schedule guidelines. Despite English’s protestations, the CIA, DOD and other agencies are beginning to follow OMB’s guidelines. A number of fee waivers have been denied to individuals and organizations on the grounds that the information being sought will not be “of current interest to the general public,” or that the public will not “ultimately benefit from the information.”* The question of whether or not information will be relevant or of interest to the public is subjective,

and difficult to regulate. One of the dangers is that these kinds of decisions could be politically motivated, and that agencies could begin to protect themselves from public scrutiny, using a fee waiver rationale.

Representative Gerald Kleczka has introduced legislation (H.R. 3885) that would improve the 1986 Act by, among other things, broadening the categories of requesters entitled to waivers and permitting judges to penalize agencies which delay disclosure or withhold information in violation of the law.

The second task is to push for legislation that will update the FOIA for the computer age. The Act itself must clearly state that it applies to information collected, stored in, and disseminated by computer. We must monitor those agencies that deny us access to information on the grounds that the requested information is computerized. This occurred not long ago when the Community Environmental Health Center at Hunter College submitted a FOIA request to the Department of Labor for data about health hazards at some 100 companies in Brooklyn. At first the Center was told that it should request computer tapes; then, that this would cost \$1,000 and no fee waiver would be granted; and then that the FOIA does not apply to computerized government data.

Still, there have been a few encouraging rulings at the agency appellate level, including a dazzling DOE decision, in which a request by the National Security Archive for a list of limited access reports held by DOE's Office of Scientific and Technical Information was upheld. DOE ruled that agencies are obligated under the FOIA to do an on-line search for records, stating that this "is not, in substance, significantly different from a search of a file cabinet for paper records that are responsive to a request," and "If the FOIA required anything less it would allow agencies to conceal information from public scrutiny by placing it in computerized form."

Despite this good news, we must remain vigilant. Until the FOIA is updated to include computerized information, some agencies will continue to maintain that such information does not qualify as "records" and therefore does not fall under the Act. We will have opportunities to voice our opinions on this crucial issue in the coming spring when the House Government Operations Committee's, the Subcommittee on Information and the Senate Judiciary Committee's Subcommittee on Technology are expected to hold hearings.

Accountability and open government continues to be jeopardized in the executive branch of our government, through the use of Presidential Directives that make sweeping changes in government information policy. Each administration since 1947 has used Presidential Directives for circulating decisions regarding domestic, foreign and military policies. According to a recent Government Accounting Office report, most of these Directives remain classified and details about them are largely unavailable for congressional and public scrutiny. The Reagan administration has used National Security Decision Directives to influence the course of a number of controversial issues, including the Strategic Defense Initiative, U.S. policy in Central America, and government-wide information policy.

NSDD 145 on federal telecommunications and automated information systems extended government authority to monitor and "protect" classified and unclassified material stored in or disseminated by government and commercial communications and computer systems. NSDD 84, issued in 1983 imposes wholesale prior restraint by requiring government employees to sign nondisclosure agreements and submit to polygraph examinations. To date, more than 2 million people have signed these agreements. An Executive Order (E.O. 12600) issued in June 1987 requires agencies to notify businesses when confidential information about them has been requested

under FOIA. Though agencies in the past have often notified businesses before the issuance of this E.O., the Order makes such third-party consultations official.

According to Harry Hammitt, editor of Access Reports, many of these directives have taken on a quasi-statutory status. Yet, to date, opposition to Presidential Orders has concentrated on their content, while ignoring the way they serve to protect the government from public scrutiny or, as with the business notification order, to amend the FOIA. For example, although NSDD 145 was challenged by industry leaders, librarians, public groups, and members of Congress, the legitimacy of the Directive itself was never challenged. The time has come for a full-fledged critique of this procedure. We can no longer allow the government to issue secret edicts which affect public access to government information.

One final issue. Declaring its intention not to compete with the private sector and to slash government paperwork, the Reagan administration has sought to transfer federal data collections and publishing activities into the hands of profit-making enterprises. A carryover from the Carter years, this policy of "privatization" has been gaining ground since a 1985 circular from the OMB required all executive branch agencies to abstain from supplying information to programs of interest to private sector firms. Information collections at more than two dozen agencies, including the Department of Housing and Urban Development, the Environmental Protection Agency and the Department of Energy have already been placed under private management. Also, Congress has passed laws authorizing the creation of databases that would make information collected by the government more readily available to companies interested in marketing "value-added" services.

A provision in this new trade law, for example, calls for the Commerce Department to pull together information on exports, imports and international economic competition into a central depository called the National Trade Data Bank. The stated intention is to make it easier for U.S. companies to research conditions in foreign markets.

What is distressing about this privatization trend (or more accurately stated, this new hybrid government-industry information creation) is that new information programs are being created with public monies that will have dramatic implications for the cost and availability of information. Yet little attempt has been made to ensure that the wider public benefits. The new ground rules for obtaining access could endanger the integrity of precious information collections, and since private entities are not subject to regulation regarding public access, privatization has the potential to further promote government secrecy. In 1984 the Patent and Trademark Office signed an agreement with private companies for the automation of agency records which required the agency to deny FOIA requests for the records in automated form.

The good news is that the public presently has its first major opportunity to get involved in the automation of an agency data-base. Two years ago, Congress passed the Emergency Planning and Community Right-to-Know Act of 1986, which requires the Environmental Protection Agency to establish a computerized toxic chemical inventory data-base that should be accessible to "any person," either electronically, through a personal computer or in paper form. By law, the EPA data-base should be activated in the spring of 1989.

This is the only federal statute of its kind and represents the first attempt to view the automation of agency information as a means to widen public access to that information. A precedent-setting project, the EPA data-base will be used to assess the public's interest, not only in computerized toxics information, but in utilizing government data-bases. Among the issues that require broad-based public comment at this time are how to ensure that the data-base is accessible under the

FOIA, and how it should be designed and maintained so that people can obtain information of relevance to their needs and particular geographic concerns.

[Donna A. Demac is a New York-based attorney and writer, and the author of "Liberty Denied: The Current Rise of Censorship in America" (1988), PEN American Center (568 Broadway, NYC 10012, 212-334-1660)] --

